

15-537 BRAVO-FERNANDEZ V. UNITED STATES

DECISION BELOW: 790 F.3d 41

LOWER COURT CASE NUMBER: 14-1089, 14-1091

QUESTION PRESENTED:

In *Ashe v. Swenson*, 397 U.S. 436 (1970), this Court held that the collateral estoppel aspect of the Double Jeopardy Clause bars a prosecution that depends on a fact necessarily decided in the defendant's favor by an earlier acquittal. Here, a jury acquitted petitioners of conspiring and traveling to violate 18 U.S.C. § 666, but convicted petitioners of violating § 666. The convictions were vacated on appeal because they rested on incorrect jury instructions, and it is undisputed that the acquittals depended on the jury's finding that petitioners did not violate § 666. The government nonetheless sought to retry petitioners on the § 666 charges.

Widening an acknowledged split, the First Circuit held that the acquittals have no preclusive effect under *Ashe* because they were inconsistent with the vacated, unlawful convictions. The First Circuit distinguished *Yeager v. United States*, 557 U.S. 110 (2009), which held that an acquittal retains its preclusive effect even when it is inconsistent with a hung count, on the theory that juries "speak" through vacated convictions, but not through hung counts. The questions presented are:

1. Whether, under *Ashe* and *Yeager*, a vacated, unconstitutional conviction can cancel out the preclusive effect of an acquittal under the collateral estoppel prong of the Double Jeopardy Clause.
2. Whether, under *Evans v. Michigan*, 133 S. Ct. 1069 (2013), the Double Jeopardy Clause permits a district court to retract its "judgment of acquittal" entered on remand as an interpretation of the Court of Appeals mandate.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 3/28/2016